

HEARING PANEL REPORT

This matter was heard on November 3, 2016 in Fresno, California before a panel consisting of Central Valley Regional Water Quality Control Board members Jon Costantino, Denise Kadara, and Board Chair Karl Longley. Assistant Executive Officer Adam Laputz, Patrick Pulupa, and Andrew Deeringer were Panel Advisors. Baldev and Kamaljit Batth appeared on their own behalf (Dischargers). Susie Loscutoff, David Sholes, and Patrick Barnes appeared for the Prosecution Team.

The Panel makes the following determinations:

FINDINGS OF FACT

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in California Water Code¹ section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (Wat. Code, § 13050, subd. (e).) The Central Valley Water Board is required to regulate discharges to waters of the state. (Wat. Code, § 13263.)
2. Attachment E of the Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers Not Participating in a Third-Party Group (Order R5-2013-0100) and of the Waste Discharge Requirements General Order for Growers within the Tulare Lake Basin Area that are Members of the Third-Party Group (Order R5-2013-0120) defines "irrigated lands" as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Fresno County, including the Dischargers, which were likely to be discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.

¹ All references to the Water Code refer to the California Water Code unless otherwise noted.

4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued that require parcel owners to obtain regulatory coverage for commercial irrigated lands.
5. Evaluation of county assessor and FMMP data indicates that the Dischargers own approximately 320 acres of agricultural land in Fresno County, as identified as Assessor's Parcel Numbers (APNs) 042-350-02, 042-350-03S, 042-360-04S, 042-380-17S, 042-020-10S, 042-260-22S, and 043-020-79S.
6. On 7 February 2014 and 28 April 2014, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and actions available to comply with the regulations.
7. On 9 March 2015 and 7 May 2015, Board staff conducted field inspections of Fresno County parcels 042-350-02, 042-350-03S, 042-260-22S, and 043-020-79S, and found evidence of commercially irrigated grapevines and almonds.
8. On 20 March 2015 and 29 May 2015, the Assistant Executive Officer of the Central Valley Water Board issued Water Code section 13260 Directive Letters (Directives) to the Dischargers, sent via certified mail. The Directives were sent based on evidence that the subject parcels contained commercially irrigated lands without regulatory coverage.
9. The Directives required the Dischargers to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directives, Dischargers could comply by joining the Kings River Water Quality Coalition (Coalition or KRWQC) or by submitting a Report of Waste Discharge (RoWD)/Notice of Intent (NOI).
10. The Dischargers received the Directives on 24 March 2015 and 6 June 2015, and were required to obtain regulatory coverage by 8 April 2015. The Dischargers did not obtain regulatory coverage by 8 April 2015 and did not contact the Board.
11. Because the Dischargers failed to respond by the deadline specified in the initial Directive, a Notice of Violation (NOV) was sent via certified mail to the Dischargers on 3 September 2015.

12. The Dischargers received the NOV on 8 September 2015. The Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.
13. On 17 May 2016, Regional Board Staff contacted Baldev Batth via telephone. Staff explained the Irrigated Lands Regulatory Program requirements and provided contact information for the Coalition.
14. On 23 June 2016, the Prosecution Team sent the Dischargers a notification letter via certified mail that an Administrative Civil Liability Complaint in the amount of \$40,950 would be issued if the Dischargers did not obtain regulatory coverage and initiate settlement discussions by 8 July 2016.
15. The Dischargers received the notification letter on 27 June 2016. The Dischargers neither obtained regulatory coverage within the 14 day limit stated within the notification letter, nor did the Dischargers contact the Board in response to the letter.
16. The Dischargers enrolled in the Coalition on 25 July 2016.
17. On 24 August 2016, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0563 to the Dischargers in the amount of thirty-five thousand, four hundred ninety dollars (\$35,490) for failing to obtain coalition membership or submit a Report of Waste Discharge as required by Water Code section 13260.
18. The required factors under Water code section 13327 have been considered using the methodology in the Enforcement Policy as explained in detail in Attachment A to the Order, which is incorporated herein by reference.
19. On considering the written record and evidence presented at the hearing, the Panel determined that an administrative civil liability of thirty-five thousand, four hundred ninety dollars (\$35,490) should be imposed on the Dischargers pursuant to Water Code section 13261 for violation of Water Code section 13260.

CONCLUSIONS OF LAW

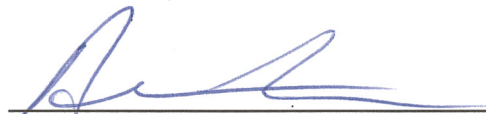
1. The failure to submit a RoWD constitutes a violation of Water Code section 13260.
2. Pursuant to Water Code section 13261, subdivision (b)(1), the Regional Board may impose administrative civil liability up to \$1,000 for each day of violation.

3. The total maximum amount of Administrative Civil Liability assessable for the violations alleged in Complaint No. R5-2016-0563 pursuant to Water Code section 13261 is \$473,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of \$35,490 on the Dischargers for violations found herein to have been committed by the Dischargers.

I, ADAM LAPUTZ, Assistant Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the recommendation issued by this Hearing Panel for the California Regional Water Quality Control Board, Central Valley Region.



Adam Laputz
Assistant Executive Officer

12-2-16
Date